IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8425 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH @ RAMU KHANABHAI CHAMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR CHETAN B RAVAL for Petitioner

Ms.Harsha Devani, learned A.G.P. for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 9.6.2000 passed against the petitioner by the Police Commissioner, Ahmedabad City detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. The petitioner is detained at District Jail, Surat since

9.6.2000.

No reply to the petition has been filed.

The grounds enclosed with the detention order show that 5 criminal cases were registered against the petitioner for various offences under the provisions of I.P.C. The detaining authority has referred to petitioner's criminal and anti social activities and has found the petitioner to be a dangerous person. On the basis of the criminal activities and the 5 criminal cases registered between 16.12.99 and 31.5.2000 against the petitioner, it cannot be said that the petitioner's activities were dangerous to the public order. At the most it can constitute a case of breach of law and order and not that of public order.

Besides this the detaining authority has referred to two incidents dated 30.4.2000 and 17.4.2000 about which depositions have been made by the witnesses against the petitioner on 5.6.2000 and 6.6.2000. It is not in dispute that the statements of these witnesses, which were recorded on 5.6.2000 and 6.6.2000, were verified by the detaining authority on 8.6.2000 and the detention order was passed on 9.6.2000. The detaining authority has invoked Sec.9(2) of the Act for non disclosure of the identity of the witnesses. Learned counsel for the petitioner has cited an unreported decision dated 6.10.2000 in Special Civil Application No.8546/2000 wherein the earlier decision of this court rendered in the case of Kalidas Chandubhai Kahar v. State of Gujarat, reported in 1993(2) GLR 1659 was considered, wherein it was held that the detaining authority's satisfaction stands vitiated and that it was a case of wrong exercise of power under S.9(2) of the Act. In this view of the matter, it is found that, in the facts of this case also, wrong exercise of power under S.9(2) of the Act is clear.

For the reasons, as aforesaid, the impugned detention order dated 9.6.2000 passed by the Police Commissioner, Ahmedabad City cannot be sustained in the eye of law and the same is hereby quashed and set aside. The respondents are directed to release the petitioner Ramesh alias Ramu Khanabhai Chamar forthwith from the District Jail,Surat where he is detained since 9.6.2000, in case he is not required to be detained in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)